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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,073	02/11/2003	Hans Sachse	sachse	1580

Herbert B. Keil  
Keil & Weinlauf  
1101 Connecticut Ave., N.W.  
Washington, DC 20036

EXAMINER
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CHANG, VICTOR S

ARTICLE	PAPER NUMBER
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DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.

Applicant(s)

09/976.073

SACHSE, HANS

Office Action Summary

Examiner

Art Unit

Victor S Chang

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002 and 7 January, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Rejections not maintained are withdrawn.

### ***Response to Amendment***

3. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

While it is permissible to amend the Specification according to the patent which has been incorporated by reference, the amendment must find express or inherent support within the teachings of the incorporated by reference subject matter. It is noted that Applicant briefly stated that the amended Specification is supported by material taken from US 6015379 (Response, page 3, second paragraph, Paper No. 8). However, Applicant failed to point out the express or inherent support in US '379 for the newly amended subject matter found in the "BRIEF SUMMARY OF THE INVENTION", "BRIEF DESCRIPTION OF THE DRAWINGS", AND "DETAILED DESCRIPTION OF THE INVENTION", nor does the Examiner find the amendments to the aforementioned sections inherent. As such, the amended Specification appears to contain "new matter" which is not disclosed in US '379.

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4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner reiterates that the claims are still generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors (see section 6 of Paper No. 5). Examples include:

In newly amended claim 1, line 1, the phrase "with transverse stiffening" is vague and indefinite, and appears to be redundant. It is not clear to the Examiner whether the elastic tape has "transverse stiffening" property, or a component of the elastic tape having "transverse stiffening" property. Also, at line 3, the phrase "homogeneous material" is vague and indefinite, in particular it is not clear to the Examiner what "homogeneous" encompasses. Additionally, at line 4, the phrase "solid connection" is vague and indefinite, i.e., it is not clear to the Examiner what "solid" encompasses.

In claim 2, in addition to the vague and indefinite phrase "homogeneous material" at line 1, it is not clear how the phrase "firm connection" at line 3 is different in scope from the "solid connection" in claim 1, line 4. Also, at line 4, the phrase "into the loose surface structure" lacks antecedent basis. Further, at line 5, the phrase "required more solid properties" is clearly vague and indefinite.

In claim 3, line 1, the phrase "so-called 2-component adhesive" is clearly vague and indefinite, i.e., it is not clear to the Examiner the scope of the term "so-called".

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In claim 5, line 2, the phrase "by means of temperature change" is vague and indefinite, it is not clear to the Examiner the temperature is to be increased or decreased, and the amount of temperature change.

In claim 6, line 2, the phrase "period of time sufficient for production" is clearly vague and indefinite.

In claim 7, lines 1-2, the phrase "well tolerated by humans and does not cause injuries" is also clearly vague and indefinite.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Evans (US 5522787).

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Evans' invention is directed to a soft, elastic support with a semi-rigid stiffener (Abstract). Figs. 1 and 1A show an article with a support 11 which is made of a soft, but elastic or resilient material, such as cellular polyurethane or foam rubber. A stiffener 15 is adhered to the support 11 by the adhesive 13. The stiffener 15 is preferably an elongated bar of a semi-rigid material, such as Buna N, with a durometer hardness of about 65. The stiffener should be elastic and should resist bending so as to provide additional stiffness to the support 11 (column 2, lines 9-24).

For claims 1 and 2, it is believed that the stiffener of semi-rigid material is inherently homogeneous, i.e., uniform throughout. If such is not the case and the reference is not considered to be an anticipation, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to select suitable elastic tape and stiffening strip materials and adhere the stiffening strip in transverse direction on the elastic support as taught by Evans, motivated by the desire to form an article with transverse stiffening effect.

Evans also teaches PSA acrylic adhesives (column 2, lines 17-18) which are believed to meet the limitations of claims 3-8. Alternatively, if the reference is not considered to be an anticipation, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to adhere a suitable adhesives, i.e., "stiffening strips", to the surface of the elastic tape, such as a strip of cured 2-component adhesive, motivated by the desire to provide additional stiffness support, as taught by Evans. Further, the Examiner notes that PSA acrylic adhesives are old and well known, and clearly reads on adhesives formed of "2-component" of a solid(s) and a

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solvent, and also reads on application in which the solvent dries as the adhesive cures.

For claims 7 and 8, these properties are believed to be, if not inherent, well within the skill of the art.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 703-605-4296. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

VSC  
February 7, 2003

DANIEL ZIRKEN  
PRIMARY EXAMINER  
GROUP 1800

1700

*Daniel Zirken*